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REMARKSPriority:

The Examiner contends that Applicant is entitled to claim priority only to U.S. Patent No. 5,856,249 which has an effective filing date of January 6, 1998. The Examiner contends that U.S. Patent No. 5,807,794 fails to disclose that the fabric can be a woven fabric and that the weft inserted yarns are interwoven with the yarns laid-in the warp direction. (Paper 19, p. 2)

Applicant respectfully contends that the application is entitled to priority of all the earlier applications which resulted in U.S. Patent Nos. 5,807,794, 5,632,526, 5,533,789, and 5,856,249 to the extent that the matter originally disclosed is common with the present invention.

Applicant respectfully submits that U.S. Patent No. 5,807,794 adequately discloses "a fabric composite of use in a seating structure including a furniture support textile joined to a cover of woven or knitted fabric such as woven or knit automotive fabric by a layer of elastomeric resin" (col. 2, lines 38-41). Therefore, the '794 patent teaches the need for a two layer seating fabric comprised of a warp knit base structure and an aesthetic cover fabric disposed over the base structure. This cover fabric disposed over the base structure may have a woven construction (col. 5, lines 23-24). The fabric of the current invention replaces the need for this two layer approach for seating fabrics, as disclosed in the '794 patent, by providing a single woven fabric layer capable for use as a seating structure.

Thus, Applicant respectfully submits that because of these common adequately disclosed elements, Applicant is entitled to the priority of the earlier applications resulting in U.S.

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Patent Nos. 5,807,794, 5,632,526, 5,533,789, and 5,856,249 to the extent that the matter originally disclosed is common with the present invention.

Double Patenting Rejections:

Claims 15-21 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 6-8 of U.S. Patent No. 5,856,249 and further over claims of U.S. Patent No. 5,855,991 in view of Gretzinger et al. (4,469,739). Applicant is willing to file a terminal disclaimer in compliance with 37 CFR 1.321(c) to overcome these rejections. Both the '249 patent and the '991 patent are commonly owned by Milliken Research Corporation, and the current pending application is also owned by Milliken Research Corporation. Upon filing a terminal disclaimer, Applicant respectfully submits that this rejection will be overcome.

35 USC Section 103 Rejections:

Claims 15-21 were rejected as being unpatentable under 35 USC 103(a) over Gretzinger et al. in view of Stumpf et al. (6,035,901). The Examiner contends that it would have been obvious for one having ordinary skill in the art to substitute the textured yarns comprising polyester and elastomeric filaments taught by Stumpf et al. for the yarns running perpendicular to the elastomeric monofilaments taught by Gretzinger et al., since Gretzinger et al. discloses these yarns can include elastomeric material and the textured yarn would improve the hand and softness of the woven support fabric making it more comfortable to sit on. The Examiner further states that since Gretzinger et al. discloses that it is customary to stabilize elastomeric filaments with UV stabilizers, it would have been obvious for one having ordinary skill in the art to stabilize the elastomeric material dispersed in the perpendicular yarns as well as to improve the elastomeric filaments to UV light, and in turn increase the life of the fabric.

(Paper 19, pp. 5-6)

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Applicant respectfully submits that this rejection fails to establish a prima facie showing of obviousness, since the combination of references fails to disclose expressly claimed elements or limitations of Applicant's invention. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Applicant respectfully submits that Gretzinger et al. do not teach or suggest using a textured yarn mixed with elastomeric filaments as the yarn running perpendicular to the elastomeric monofilaments as claimed by Applicant in independent claim 15. Applicant further contends that Stumpf et al. does not overcome the deficiencies of Gretzinger et al., as described above in reference to independent claim 15, or teach or suggest using a textured yarn mixed with elastomeric filaments as the yarn running perpendicular to the elastomeric monofilaments.

Therefore, since the combination of references fails to disclose expressly claimed elements or limitations of Applicant's invention, Applicant respectfully submits that a prima facie showing of obviousness has not been established. As such, Applicant respectfully submits that this rejection is improper, and since claims 16-21 depend from claim 15, requests that the rejection of claims 15-21 be withdrawn.

Claims 15-21 were also rejected as being unpatentable under 35 USC 103(a) over Stumpf et al. in view of Gretzinger et al. The Examiner contends that it would have been obvious for one having ordinary skill in the art to substitute the sheath/core bicomponent yarn taught by Gretzinger et al. for the elastomeric components in the woven seat support taught by Stumpf et al. so that the fabric can be bonded at the crossovers to increase the stability of the fabric and make it less likely to unravel. The Examiner further submits that it would have been obvious to one having ordinary skill in the art to add UV stabilizers, as taught by Gretzinger et al., to the elastomeric filaments taught by Stumpf et al. to increase the life of the elastomeric

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material in the seat support by improving the elastomeric filaments resistance to UV light.  
(Paper 19, pp. 7-8)

Applicant respectfully submits that Stumpf et al. do not teach or suggest using a textured yarn mixed with elastomeric filaments as the yarn running perpendicular to the elastomeric monofilaments as claimed in independent claim 15. Applicant further contends that Gretzinger et al. does not overcome the deficiencies of Stumpf et al., as described above in reference to independent claim 15, or teach or suggest using a textured yarn mixed with elastomeric filaments as the yarn running perpendicular to the elastomeric monofilaments.

Therefore, since the combination of references fails to disclose expressly claimed elements or limitations of Applicant's invention, Applicant respectfully submits that a prima facie showing of obviousness has not been established. As such, Applicant respectfully submits that this rejection is improper, and since claims 16-21 depend from claim 15, requests that the rejection of claims 15-21 be withdrawn.

Claims 15-21 were rejected as being unpatentable under 35 USC 103(a) over McLarty, III (5,855,991) in view of Gretzinger et al. The Examiner contends that it would have been obvious to one of ordinary skill in the art to add UV stabilizers to the elastomeric components in both sets of yarns in the woven fabric taught by McLarty, III in '991 to increase the life of the fabric by increasing the fabric's resistance to UV degradation. The Examiner also submits that one of ordinary skill in the art would be motivated to choose the barathea weave pattern which will be comfortable to the user by placing the softer yarns (i.e. the multi-filament yarns) on the surface of the fabric while providing equally distributed support to the user. (Paper 19, p.9)

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Citing 35 USC Section 103(c), Applicant respectfully submits that the McLarty, III reference is improperly used in forming the basis for this rejection. 35 USC Section 103(c) states:

"Patentability shall not be negated by the manner in which the invention was made. Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

The McLarty, III reference is assigned to Milliken Research Corporation. The pending patent application currently under examination is also assigned (or will be assigned if not done so already) to Milliken Research Corporation. Thus, the McLarty, III reference and the pending application are (or will be) commonly assigned.

Furthermore, Applicant believes the McLarty, III reference qualifies as prior art under 35 USC Section 102(e). The relevant portion of 35 USC Section 102(e) states:

"The invention was described in a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent,  
..."

Accordingly, in light of the discussion presented above, Applicant respectfully submits that the rejection under McLarty, III is improper and respectfully requests that the rejection over McLarty, III in view of Gretzinger et al. be withdrawn.

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In view of the above remarks, it is respectfully requested that claims 15-21 be allowed and that the application be passed to issue.

Respectfully requested,

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